



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,193	11/18/2003	Kevin J. Dowling	CKB-113.01	6235

25181 7590 12/23/2005

FOLEY HOAG, LLP
PATENT GROUP, WORLD TRADE CENTER WEST
155 SEAPORT BLVD
BOSTON, MA 02110

EXAMINER

LOWEN, ALYSSA

ART UNIT	PAPER NUMBER
----------	--------------

3711

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,193

Applicant(s)

DOWLING ET AL.

Examiner

Alyssa M. Lowen

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/2/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 2/2/05 is in compliance with the provisions of 37 CFR 1.97 and 37 CFR 1.98. Accordingly, the information disclosure statement is being considered by the examiner.

Priority

2. Applicant's claim for the benefit of a prior-filed application (60/427805) under 35 U.S.C. 119(e) is acknowledged. Applicant has complied with all conditions for receiving the benefit of an earlier filing date.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Rodgers (5989091). Regarding claim 1, Rodgers discloses an apparatus having a sensor in the form of a motion responsive switch (10) for monitoring a detectable condition such as movement of the toy. The device includes output devices in the form of light emitting diodes (14) and a speaker (15). A controller in the form of a control circuit controls the output devices based at least in part on the one detectable condition (column 1 lines 35-40). With regard to claims 2 and 7 the apparatus is configured as a toy duck (Fig. 1). Regarding claim 3 the detectable condition is related to motion of the

apparatus where the sensor (10) is configured to monitor at least one parameter associated with the motion (column 3 lines 59-66). Regarding claims 4 and 5 the perceivable condition is related to both light and sound effects (column 1 paragraph 3) produced by a light source (14) and a sound generator (15) respectively. In regard to claim 6 the light source includes an LED based light source (column 1 lines 23-24). Regarding claim 8 the reference discloses a method of enhancing interactivity with a toy by having a sensor for monitoring a detectable condition associated with the toy, providing a perceivable condition from the toy and controlling the perceivable condition based at least in part on the detectable condition with a control circuit. In regard to claim 9, the detectable condition is related to movement of the toy and is monitored by a motion responsive switch based on that movement (column 3 lines 59-66). With regard to claims 10 and 11 the perceivable effect is related to both light and sound controlled at least in part by the detectable condition (column 3 lines 59-66). Regarding claim 12 the lighting effect is accomplished using an LED based light source (column 1 lines 23-24).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodgers in view of Lys (6166496). Rodgers discloses an LED-based light source (14) a sound generator in the form of a speaker (15) and a controller configured to control the

LED light source and sound generator to provide a coordinated light and sound effect (column 3 lines 59-66). Also disclosed is a sensor (10) to monitor a detectable condition where the controller controls the light source and sound generating device based on the detectable condition (column 3 lines 59-66). The device of Rodgers discloses the basic inventive concept, substantially as claimed, with the exception of the LED light source providing multicolored illumination. However, Lys discloses that a single LED light source can change colors in response to changing electrical signals (column 1 lines 59-61) showing this feature to be old in the LED art. It would have been obvious to one of ordinary skill in the art from the teaching of Lys to have the LED light source of Rodgers be able to provide multicolored illumination in order to retain the interest and amusement of a child with the toy.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cazalet (5249810) discloses an impact responsive toy. Rumsey (4801141) discloses a light and sound producing toy. Choi (6005204) discloses a motion-sensing device. Lee (5971827) discloses a sounding and illuminating novelty article.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Lowen whose telephone number is 571-272-2684. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AML



EUGENE KIM
PRIMARY EXAMINER